Public Service Company of Colorado *and* International Brotherhood of Electrical Workers, Local 111. Cases 27–CA–10374, 27–CA–10406, and 27–CA–10592

January 18, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On November 16, 1989, Administrative Law Judge Joan Wieder issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, the Union filed a brief in response to the Respondent's exceptions, and the Respondent filed a brief responding to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Public Service Company of Colorado, Denver, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The judge granted the ''General Counsel's unopposed motion to correct the transcript.'' As no motion to correct the transcript was filed, we reverse this ruling by the judge.

[2] In adopting the judge's finding that the Respondent did not violate Sec. 8(a)(5) and (1) by participating in court-ordered EEO settlement conferences without affording the Union an opportunity to be present, we particularly note that the Respondent directed Baca, Bishop's attorney in the EEO suit, to include the Union in the settlement process. Moreover, at no time during EEO settlement discussions did the Respondent seek to settle the grievance involving Bishop's discharge in the Union's absence.

Barbara E. Young, Esq., for the General Counsel.
David W. Kerber, Esq. (Kelly, Stansfield & O'Donnell), of Denver, Colorado, for the Respondent.
Joseph M. Goldhammer, Esq. (Brauer, Buescher, Valentine, Goldhammer & Kelman), of Denver, Colorado, for the Charging Party Union.

DECISION

STATEMENT OF THE CASE

JOAN WIEDER, Administrative Law Judge. This case was tried on July 18 and 19, 1989.[1] The charge was filed in Case 27–CA–10374 by the International Brotherhood of Electrical Workers, Local 111 (the Charging Party or Union), on February 3, 1988, against Public Service Company of Colorado (Respondent or Company), and amended on March 10 and 21, 1988. The charge in Case 27–CA–10406 was filed by the Union, on February 26, 1988, and amended on April 18, 1988. The charge in Case 27–CA–10592 was filed by the Union on August 4, 1988.

After investigating these three distinct and separate timely filed charges, the Regional Director for Region 27 issued complaints which were consolidated for ease and economy of processing. The consolidated complaint was further amended at hearing. The last consolidated complaint, dated April 14, 1989, contains allegations of two distinct violations of Section 8(a)(1) of the Act. One allegation is a supervisor told a union steward asking for a written reply to a grievance seeking sick pay, that if the supervisor had to reply to all of the stewards' petty first-step grievances, the supervisor would not grant the requested sick pay. The second allegation is that Respondent discriminatorily required the same union steward to remove union stickers from that employee's office window.

The consolidated complaint, as amended, also alleges two distinct violations of Section 8(a)(5) and (1) of the Act. One assertion is: since about December 17, 1987, the Respondent failed and refused to meet and bargain with the Union concerning wages, hours, and other terms and conditions of employment, because, since about February 25, 1989, Respondent, acting by and through its attorney, Marla Petrini, adjusted or attempted to adjust the contractual grievance without affording the Union an opportunity to be present at settlement conferences before a United States magistrate. The second allegation of failure and refusal to bargain in good faith involves a request for information concerning a grievance filed by a union steward which questions the wages paid employees of an independent contractor, pursuant to articles 19 and 30 of the appropriate collective-bargaining agreement.

Respondent's timely filed answers to the complaints admit certain allegations, deny others, and deny committing any unfair labor practices.

All parties were given full opportunity to appear and introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs.[2]

Based on the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent's answers to the complaints, as amended, admit, and I find, they meet one of the Board's jurisdictional standards and that the Union is a statutory labor organization. Respondent also admitted for this case only, the Union was the collective-bargaining representative of the unit described in the complaint.[3]

[1] All dates are in 1988 unless otherwise indicated.

[2] The Acting General Counsel's unopposed motion to correct the transcript, dated June 9, 1989, and appended to his brief, is granted and received in evidence as G.C. Exh. 18.

[3] The unit admitted as appropriate for collective-bargaining purposes within the meaning of Sec. 9(b) of the Act, includes:

> All operating, production, and maintenance employees of the gas and electric operating department, including appliance servicement of the commerical department, storekeepers and warehousemen of the account-

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent is a public utility engaged in the generation, transmission, distribution, and sale of electricity and the distribution and sale of natural gas. Respondent admits that, at all times here pertinent, Gary Goodwin is the director, labor relations; Thomas W. Hess is the manager, regional production; and Lyle Adams, a warehouse supervisor; and they are supervisors within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act.

B. *The Alleged Violations of Section 8(a)(1) of the Act*

David Meck, a union steward, works for Respondent as a senior storekeeper at the Materials Distribution Center in Henderson, Colorado. At all times here pertinent he was supervised by Lyle Adams. Prior to becoming a warehouse supervisor, Adams was part of the Company's team that designed the Materials Distribution Center. The Materials Distribution Center is a large complex, the building is about 33 acres. It is a highly automated storage and distribution center for all the materials used by Respondent.

1. The alleged threat

In January 1988, Meck filed a grievance with Adams on behalf of an employee named Paul Repsher. On or about December 28, 1987, Repsher telephoned Meck because Adams was unavailable to state he would be absent from work that day. Repsher had previously cut his hand and had stitches, which he reopened that morning as he was trying to shovel his car out of snow after a storm. Repsher related the message to Adams that Repsher would not report to work that day. Adams was only initially informed Repsher would not report for work that day, he was stuck trying to shovel his car out of the snow. It was not until after the grievance was filed that Adams learned Repsher had an injury which prevented him from digging his vehicle out of the snow and caused his absence. The Company had an established policy that employees will not be paid if they do not report to work because of snow.

When Repsher returned to work, consonant with established company policy, Adams required him to take either vacation time or ''no time'' when absent because of snow. Since Repsher had no vacation time, he was not paid for the day he was absent. Meck filed a grievance on January 15, 1988, asserting Repsher should receive sick pay for the day because he was unable to get to work due to the described injury. It is uncontroverted, when Adams received the information on the grievance that Repsher was absent because of the injury, he said he would take it into consideration.

At the first-step grievance meeting with Meck and Repsher on January 15, Adams discussed the reporting procedures to qualify for sick leave and other aspects of the grievance, but he did not inform the participants of a decision at that time. A second meeting on the grievance was held on January 25 and at this meeting, Adams did say Repsher would probably receive the requested sick pay, however, the collective-bargaining agreement required sick leave be requested the day of the absence. After consulting with his superiors, Adams saw Repsher the following day, January 26, and informed him he would authorize sick pay for the day he missed. Later during that day, January 26, 1988, Adams believes he informed Meck of his decision. Meck, on the other hand, claims that on January 26, he again asked Adams to respond to the grievance in writing pursuant to a request from his union representative, Nancy Sheehan. According to Meck, Adam's ''answer to me was at that time, 'If I have to answer all of your petty first-step grievances, I will not pay him.''' Meck then said, ''I don't have to listen to your threats.''

Adams admitted Meck asked for a written response several times because Sheehan requested he sign the grievance; Adams never signed the grievance. Adams interpreted the collective-bargaining agreement as not requiring a written response if settled at the first step.[4] According to Adams, on January 26:

> A. Later in that day Dave and I, he's a senior storekeeper and him and I had contact daily about running the warehouse and the yard areas, and later that day we had a brief meeting to discuss some items about our normal work.
>
> At that time I believe I also mentioned to Dave that—he presented me with the grievance again at that time, as I recall, and at that time I told him I had already told Paul Repsher that I was going to pay him his sick leave, and I informed him payroll had already been informed. Plus, we had some other conversation, too.
>
> Q. What was the other conversation?
>
> A. It was, you know, some was about the work we was going through. Dave wanted me to respond in writing to this grievance, and I related to him that I wasn't going to because, you know, I had already settled it verbally. We had some other discussions about, you know, give and take on what was going on in the building.
>
> *I think I made a comment to him—seemed like at that point in time there was a lot of grievances being filed in the department, and I just made a passing comment about, How come there's so many grievances being filed*, [Emphasis added] just a conversational thing, words to that effect. At some point in time during our discussion—you know, our company business, basically, we was through discussing it, and Dave got up and said something to the effect that, I don't have to—or I won't stand for your threats, or I don't have to listen to your threats, words to that effect.
>
> I didn't realize—or at that time I didn't know what he was talking about. He caught me completely out of the clear blue.

ing department and health physics technicians at Fort St. Vrain, But EXCLUDING part-time employees doing miscellaneous work, all other employees of the commercial and accounting departments, all engineering and other technical employees, and all supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

[4] Respondent argues that Meck's insistence on a written response was an incorrect reading of the collective-bargaining agreement which impairs his credibility. I conclude this argument is unpersuasive for there is insufficient evidence to demonstrate part practice. Assuming Mech was incorrect in his request for a written response, there was no refutation of his claim he was relaying a request from a union agent, and therefore his actions have not been shown to have been disingenuous or to otherwise exculpate Adams' behavior.

Adams disclaims Meck's testimony that he did not know the Repsher grievance was resolved until February 10, 1988. In support of Adams' testimony, Respondent introduced a handwritten memorandum dated January 26, 1988, 2:30 p.m. The memorandum indicates Adams told Meck Repsher would receive sick leave. These notes, which were of the January 26 meeting, also state, as follows:

> We had discussion on Union Stewards and other employees cursing at one another in the office this AM about Union problems and I ask [sic] Dave what their problems were? (Discussed cursing with employee [Paul] assigned to me earlier in day).
>
> We had some more discussion & I told Dave [Meck] as far as I was concerned there was no grievance and wouldn't respond to it.
>
> He [Meck] said would call Nancy.
>
> I again ask [sic] him what was going on—discussion—& he said he didn't like me threatening him, & left.

I conclude the memorandum fails to refute Meck for it does not indicate Adams was confused or unaware of what Meck construed as a threat. On the contrary, if Adams wrote the memorandum because he was concerned about Meck's threat comment, some reference to such concern would be expected to appear in these notes. Instead of detailing the nature and content of the discussion preceding the threat, Adams merely notes there was a discussion. The absence of a reference to the nature and subject matter of the discussion, renders the memorandum not supportive of Adams' testimony. Further, Adams admitted the threat reference closely followed his comment about ''a lot'' of grievances being filed in his department.

I base my finding that Adams was not a credible witness principally on demeanor. He did not appear to be testifying in an open and forthright manner. Adams volunteered information and appeared to be attempting to present evidence in a light most favorable to his position as an employer rather than trying to testify candidly. He did not respond to some questions and exhibited poor recall concerning many matters, he could only present details on very selected matters. Adams also gave contradictory evidence. For example, Adams first indicated he ''took'' these notes ''at'' the meeting. He then stated that because he was shocked at Meck's threat statement, he wanted to memorialize the conversation so he made the notes after Meck left his office, indicating they were made after the meeting. Only after further cross-examination, did Adams admit the notes were made after the conversation with Meck.

Adams also testified he usually makes notes whenever he has a grievance hearing to ''substantiate what was said on both sides.'' Adams was asked to produce these other notes and after searching his files he failed to provide any other ''contemporaneous'' notes involving any matters other than the Repsher grievance and then claimed only one of four documents he produced was illustrative of his practice of making contemporaneous notes. These notes were in fact made at the time of the January 25 first-step grievance meeting concerning Repsher's claim for sick leave. There were no other notes of any other kind in Adams' 1988 and 1989 files. This dearth of notes contradicts Adams' claim of habitual note taking, particularly since he testified he informed Meck he was concerned about the number of grievances being filed in his department.

Adams' testimony of when he made the notes is reflective of his visible lack of his candor; he expended much time and effort describing a practice of note taking he was unable to substantiate. His inconsistent and unsubstantiated testimony buttresses my finding that Adams was not credible based on demeanor. I note that even absent this inconsistent testimony, I would have concluded Adams was not credible based solely on his demeanor.

In contrast, Meck appeared open and honest. He seemed to be trying to tell all the facts, even if they were antithetical to his interests. For example, he readily admitted Repsher did not tell him he was sick when he called in or request sick leave at the time. He merely said he could not come to work. Meck also candidly admitted Adams said during the first meeting that he would probably pay Repsher. I credit Meck's testimony, as follows:

> Q. And you're now testifying that on the 27th, two days later, that he said he would not pay him.
>
> A. No. He said, and his quote was that, If I have to listen to your petty first step grievances I will not pay him.
>
> Q. Did you consider this a petty first step grievance?
>
> A. No, I didn't.
>
> Q. Was it based upon that statement that you thought that Mr. Adams was not going to pay Mr. Repsher?
>
> A. Yes. That if he had to answer the grievance that he wouldn't pay him. That's what he told me.

Meck also credibly testified Adams did not tell him he had determined to pay Repsher sick pay until February 10, which was the third time he gave the grievance to Adams for a written response.

Discussion

Section 8(a)(1) of the Act declares:

> It shall be an unfair labor practice for an employer—(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.[5]

The alleged statement was made during the processing of a grievance to a union steward who was engaging in concerted protected activity.

Respondent argues there is no evidence of animus because Adams had been a union member and steward prior to being promoted to a supervisory position. Further, Respondent claims there is no evidence of intimidation or coercion for Meck felt he could state he would not be threatened ''get up and walk out of a meeting with Adams without fear of reprisal.'' Animus and the success of any threat are not essential elements in finding a violation of Section 8(a)(1) of the Act. As found in *American Freightways Co.*, 124 NLRB 146, 147 (1959):

[5] Sec. 7 of the Act, as here pertinent, provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

> Interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act.

Having found Adams told Meck ''[I]f I have to answer all your petty first step grievances, I will not pay [Repsher],'' based on my credibility resolutions, it must be determined if the statement was intimidating or coercive. There is no question Adams understood Meck made the requests for a written response pursuant to instructions he received from a union business agent. The statement was made during Meck's participation in processing a grievance as a steward and I find the comment cast a chilling effect on Meck's pursuance of these duties. *Cook Paint & Varnish Co*., 258 NLRB 1230 (1981). I further find the statement was a threat to not honor the grievance processing mechanism of the collective-bargaining agreement, in violation of Section 8(a)(1) of the Act. *D'Alessandro's, Inc*., 292 NLRB 81 (1988).

2. The union sticker incident

At all times here pertinent, Meck had a cubicle next to Adams' office which had an interior glass window facing into the warehouse. Three other storekeepers have similar cubicles. Meck had affixed to the window two union stickers and a homemade nameplate. One sticker was larger than the other, and they both bore the Union's emblem. The larger sticker was about 2 inches in diameter. On or about February 10, Meck was called into Adams' office to discuss the stewards' request that the Repsher grievance be signed, and prior to Adams informing Meck the Repsher grievance was resolved, Adams told Meck to remove the stickers from the windows of his cubicle. Adams also informed Meck he did not have to respond to the grievance in writing for it had been granted. Meck credibly testified, as found above, that this was the first time he was informed the grievance was granted.

Meck had affixed the larger sticker on the window within the first 2 weeks of his moving into that office, June or July 1987. The smaller sticker was placed in the window about 2 months later. Immediately after leaving Adam's office, Meck removed the stickers. In addition to the stickers and the homemade nameplate, Meck on occasion placed in the window pictures of his wife and children, but unlike the stickers and nameplate, the family pictures were not taped to the window. Also Meck hung jokes and calendars on the walls of his cubicle from time to time. As far as Meck knows, the only company policy dealing with the issue forbids posting pornography. Meck observed the occupants of similar offices in the building also put in their windows various stickers, nameplates, pictures of their families, and cartoons and/or jokes.

Sheehan, in the course of her union duties, has occasion to visit storekeepers at the Materials Distribution Center and, during a visit in April 1989, observed: ''pictures, little stickers, one was like a little radio sticker on the cubicle, like you see bumper stickers, all sorts of paraphernalia, cartoons, or pictures, or jokes, all sorts of things, personal items, and pictures of families. Some are taped on there and some are just stuck on the cubicle. But they definitely have their own personal items there.''

Sheehan further testified:

> Q. Prior to 1988, had you ever seen anything attached to the cubicle?
>
> A. Yes. Nothing has changed. It's the same items that I just testified to that were on the cubicles, were on the cubicles this last April.
>
> Q. What, if anything, have you been told by the company concerning union stickers being placed on cubicles or anyplace?
>
> A. Nothing. And I'm in frequent contact with the management out there. Mr. Donald Snapp, he is the manager of the Materials Distribution Center, and at no time has he ever put me on notice or Robert Mason, the business manager, or any other agents, that we are not to have any union stickers or any union buttons, which we distribute annually to the union members, either in their cubicles or on their hard hats. That has never been communicated to the union.

Sheehan's testimony is uncontroverted. Adams admits asking Meck to remove the stickers from his office window. Adams stated he made the request:

> Because it was my position that I like a neat workplace, and, basically, the people that work for me, you know, I'm kind of a stickler for housekeeping and neatness and I didn't allow any stickers or anything attached to the windows, whether they were union stickers or religious stickers or Bronco stickers. There were no stickers on my windows or anybody that worked for me.
>
> Q. Had you previously announced your policy to anyone else?
>
> A. No. Because there were no stickers anywhere on anybody's windows that worked for me, so I never made that statement until the first one appeared.

Adams, who was a union member for 19 years, said he displayed a union sticker on his hardhat prior to becoming a supervisor.

Adams did not directly controvert the testimony of Meck and Sheehan that other matter was displayed in the various cubicle windows and walls throughout the large warehouse, including pictures and jokes. This lack of refutation, conjoined with my prior credibility resolutions, lead me to conclude that Meck and the other storekeepers at the Materials Distribution Center posted jokes, pictures, and other personal items in their windows or on their cubicle walls without objection, and only the union stickers posted by Meck about 6 months prior to the Repsher grievance were ordered removed by Adams.

Adams claimed he did not notice the stickers previously, even though his office adjoined Meck's and he went into Meck's cubicle daily. When asked on cross-examination about the other storekeepers personal postings, he modified his position and asserted he allowed ''some latitude for people to have some personal'' items posted in their windows. Adams admitted there is no company policy restricting the posting of union stickers on office windows or walls. Adams' claim that nothing other than the stickers were in

Meck's window the day he requested their removal is not credited for the reasons previously stated.

Respondent's argument that Adams had a policy against ''junking up'' the windows at the Materials Distribution Center is unconvincing considering Adams admitted he allowed employees ''some latitude'' in posting personal items and only requested union stickers be removed at a time when he was in a dispute with Meck over whether he had to respond to the Repsher grievance in writing.

In addition to the credibility findings previously made, I also conclude the directive to remove the union stickers on the basis it created clutter or an unattractive appearance is pretext for a proscribed motive because: (1) the length of time the stickers were in the window without comment or objection; (2) the proximity in time between the request to sign the Repsher grievance and the directive to remove the stickers; (3) the routine practice of some employees to affix personal items to the windows and cubicle walls, without supervisorial objection, a practice Adams admitted he countenanced with ''some latitude''; (4) the union stickers did not violate the company rule against the use of pornography or profanity or any other regulation; and (5) there was no showing of special circumstances such as disruption of production; need for discipline; or other special circumstances, which explained the directive to not display the union stickers. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945); *Kendall Co*., 267 NLRB 963, 965 (1983). There was no claim the posting of the stick was for harassment or otherwise was not protected under Section 7 of the Act. Compare *Reynolds Electrical Co*., 292 NLRB 947 (1988). Respondent did not claim the public would likely pass by the window.

The circumstances of this case indicate, and I find, the directive to remove the stickers was in retaliation for the steward engaging in concerted protected activity as exemplified by the limitation of the edict to removing only union insignia. *St. Anthony's Hospital*, 292 NLRB 1304 (1989). Accordingly, I find this directive to be coercive and to have an undue chilling effect on protected concerted activity in violation of Section 8(a)(1) of the Act.

C. *The Alleged Violations of Section 8(a)(5) of the Act*

The consolidated complaint alleges that since on or about December 17, 1987, Respondent has failed and refused to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit by: (1) Since on or about December 17, 1987, failing and refusing to meet and bargain with the Union concerning wages, hours, and other terms and conditions of employment; and (2) Since on or about February 25, 1988, in the United States magistrate's office in Denver, Colorado, Respondent, acting by and through its attorney, adjusted or attempted to adjust contractual grievances without giving the Union an opportunity to be present at the adjustment.

1. Asserted failure to provide relevant information

Most of the facts concerning this allegation are uncontroverted. Orlando Maez, the chief union steward at Comanche Power Plant, learned in February 1988 that Glenn's Scaffolding had been awarded a contract to erect scaffolding inside one of the stations' two boilers. Maez approached the superintendent of maintenance, Fred Johnson, and inquired if the subcontractors' employees were being paid union wages. Johnson replied he did not know. Then, Maez filed a grievance.

The grievance, filed February 9, 1988, asserts that the Company violated article 19, section 9(a), and article 30 of their collective-bargaining agreement by failing to require the subcontractor, Glenn's Scaffolding, to pay his employees wages no less than Helper's scale.

Article 19, section 9(a) provides, as follows:

> Contract Work.
>
> (a) Company agrees that it will not contract any work which is ordinarily done by its regular employees for the specific purpose of laying off or demoting such employees. Company furthers agrees that prior to the awarding of a contract for any major project of a type that has ordinarily not been contracted in the past, it will advise contractor that the employees of such contractor having the same job classifications as those covered herein shall be paid not less than the wage scale provided herein for such job classification.

Exhibit B to the collective-bargaining agreement, lists the wage rates and worker classifications covered under the contract, including laborer and helper. Helpers are paid a higher hourly rate than laborers, in February 1988, helpers were paid $11.29 per hour and laborers started from $8.05 to $9.05, depending on what 6 months they worked. On November 28, 1988, the laborers' wage range was increased from $8.31 to $9.34.

Article 30 of the collective-bargaining agreement provides:

> 1. The parties agree that this Agreement, including any and all letters of understanding, constitutes the sole and complete Agreement. Regarding the application and interpretation of this Agreement, it is further understood that any and all practices mutually agreed to and accepted by the parties shall continue unless changed pursuant to the provisions of this Agreement.
>
> 2. The parties further agree that any working conditions or work practices or interpretations or application of the provisions of this Agreement that are established through the day to day operations (referred to as ''practices'') and exceed or modify the terms or conditions of this Agreement, beginning after December 1, 1981, will be limited to the specific location or facility of occurrence; and that such practices will not be applied or considered at other facilities or locations, except as provided for in this Agreement. Issues, disputes, or grievances resulting from such practices will be considered only as they apply circumstantially to the specific locations or facility where they occur.

Respondent's position at the first step of the grievance was that major scaffolding work at Comanche has ordinarily been contracted to subcontractors and there is no violation of the collective-bargaining agreement. The Company admitted it advised Glenn's Scaffolding that they would be required to pay a wage rate of a similar classification doing the work and employed by Respondent, and specified that classification as ''Construction Laborer.'' Respondent claimed this was standard language ''often'' used by Respondent in its

contracts, even if the language ''didn't need to be in there,'' according to Gary Goodwin, the Company's manager of employee relations. This contract also required the contractor ''To maintain accurate and satisfactory records and books of account adequate to evidence compliance with the Agreement.'' It is undisputed that if Respondent had its own mechanics build the scaffolding, they would have been paid according to the helper's wage scale.

The contract also had a provision where the Company could order an audit of the contractor's records to determine if the contractor was complying with the agreement and Goodwin knew of this condition. Goodwin asserted that audits would amount to harassment of all nonunion contractors like Glenn's Scaffolding for the Union had access to the wage rates of all union contractors. Therefore, Goodwin claims, the Union files a grievance any time the Company contracts work with a nonunion contractor and demands information about the contractor's wages and benefits. It is uncontroverted that in response to a similar request for information concerning a subcontractor named Flow Mole, the Respondent did request from the subcontractor wages by classification and benefits paid to their employees. Flow Mole refused to disclose the information to Respondent.

Maez admitted Respondent had previously used subcontractors to erect scaffolding at the Comanche Power Plant. The Comanche plant generates electric power and has two units. One unit was shut down for maintenance. To perform this maintenance, scaffolding is erected inside the boiler, which is a major project. Respondent does not have sufficient scaffolding for the job and would have had to rent it from a company such as Glenn's Scaffolding. It has rented scaffolding on at least one occasion in the past. When a unit is down for maintenance, called an ''outage,'' the employees work overtime to complete the work, and during the outage in question, the maintenance employees work 6 days a week, 9 hours a day. The processing of the grievance was delayed by mutual agreement because of the exigencies in performing the maintenance on the unit and restoring full power output.

The Union, by its steward Maez, had determined from an employee of Glenn's Scaffolding, who was the brother of a unit member, that the subcontractor was paying him $8.50 an hour, which is substantially below the wages paid a helper by Respondent. The Glenn's Scaffolding employee did not know the wages paid the other employees of this subcontractor for their work at Comanche Power Plant. In reply to Respondent's assertion the laborers' rate was the appropriate wage scale, Maez said ''that a laborer at Comanche is used specifically and can only perform janitorial duties. Any other work above laborer, such as a helper and above, receives more wages, which is a higher classification.'' Maez' testimony that laborers are utilized only for janitorial work was never expressly refuted.

Thomas Hess, Respondent's manager of regional production, testified without refutation that Glenn's Scaffolding was to erect scaffolding throughout the entire boiler, which is a 12-story structure. To his knowledge, company employees have never performed a job of such magnitude. The Company traditionally used subcontractors for such work, including in 1982, October 1985, April 1986, June 1987, and the time in dispute, February 1988. Glenn's Scaffolding performed the job in June 1987 as well as in February 1988.

Respondent's employees do perform scaffolding projects, but of limited scope, associated with day-to-day maintenance. He knows of no occasion where company employees performed a job of a magnitude similar to that performed by Glenn's Scaffolding in February 1988. The Union did not request information concerning the 1985 through 1987 subcontracting agreements. There was no evidence adduced concerning the 1982 subcontracting of scaffolding agreement and requests for information. Maez testified that in 1982 or 1983, the Company ''rented some scaffolding and we put it up in the boiler.'' There was no clear showing that when the scaffolding was rented, it was for a job of the scope referred to by Hess in 1982, 1985, 1986, 1987, and 1988.

At the first-step grievance meeting, the Union asked the Company to provide proof of the wages being paid the subcontractors' employees. The Respondent replied, according to Maez, as follows:

> And they said that they had no way of getting that from the company. And I told them that if it was their contract, that they should be able to get that information. And they said it was not available to them so they could not give it to us.

The Union never received the wage scale information it requested in the grievance. Goodwin explained the Respondent's reasons for not giving the Union the information sought in the grievance, as follows: ''Well, I checked to see if we had the information; we did not have the information. I also anticipated the company's position in third step that we had no obligation to supply the information since we had not violated the contract, and this contract work did not trigger the requirements of Article 19, Section 9.'' Goodwin admits all he did was look at the company file and determined it did not have the requested information. Goodwin reviewed the file and determined it was a flat rate contract. He made no effort to acquire the information. The Company did not provide information regarding fringe benefits, according to Goodwin, because ''There is no requirement for the company to provide information on fringe benefits.''[6] Neither General Counsel nor the Union have ever claimed Respondent possessed the requested information.

Respondent argues there was no need to provide the requested information to resolve the grievance. The issue was which wage rate was appropriate, laborer or helper. The contractor was told to pay the laborer wage rate and therefore, the Company claims, there was no question of how much the contractor was paying. I find this to be a somewhat specious argument, for if it was determined that most if not all of the contractors' employees were being paid at least the helpers' rate, then the Union may have determined the grievance was not necessary or inappropriate. Even if it was determined the laborers' wage scale was the appropriate rate for the contractor's employees, neither the Union nor Respondent knew whether Glenn's Scaffolding complied with the Company's contractual requirement to pay laborers' wage rates.

[6] The Company asserts a 1972 arbitration resolved that fringe benefits are not included in the terms of contract provisions which are the subject of the Glenn's Scaffolding grievance. The 1972 arbitration involved the phrase ''union conditions'' in sec. 9(b) of the collective-bargaining agreement. I conclude the arbitration decision is not a persuasive precedent in the instant case, for the term ''union conditions'' is not present in sec. 9(a) of the agreement. The 1972 arbitration did not address sec. 9(a) of the agreement.

The subcontractor was to supplement the staff, not replace it. Maez admitted that scaffolding companies have been used in the past at Comanche Power Plant. On one occasion, Maez asked Respondent about wages paid by the outside contractor, Vacuum Jet, and: ''Frank Roitsch took me [Maez] in his office and showed me a piece of paper that he had that stated approximately $30.00 an hour for laborer wages or whatever, and he said, We are in compliance because of the fact that this is what we have, this is what we assume that the contractor is paying. He said, We have no way of knowing whether the full amount or a partial amount or whatever is going to the employee.'' [Quotation marks omitted in original.] This was the only occasion the Company provided subcontractor wage information to Maez. Maez further testified that if the Company paid Glenn's Scaffolding employees the helpers wage rate, he probably would not have filed the grievance.

John Sena, the Union's senior assistant business manager, worked at Comanche from the time it was being constructed until 1981, when he began working for the Union. He admitted that the first time the scaffolding of the entire boiler was performed, it was contracted out, which was in 1982. Sena was told by the on-site steward that the Company's documentation was in order, and no grievance was filed. He does not know the nature of the documentation provided the steward in 1982.

Sena came into the grievance-arbitration procedure at the second step; attending the second-step meeting in early June 1988. According to Sena:

> I opened the meeting by, first of all, going through the committee, who was the witnesses and so forth of the union, and giving the union's position as to what articles were violated and why. I quoted Article 19 and the section pertaining to contracting, Article 30, which is the past practice.
>
> I had told Hess that we needed the information. I also had put it in writing on my May 6 letter and asked that we need information pertaining to the wages that are being paid and also the number of employees that Glenn's Scaffolding had employed at the time.
>
> Mr. Hess' position after I displayed all that, gave him that information, is that they would have to check into the information first. He did not deny it or condone whether he would give me any information, and he told me their [sic] was, basically, that this article wouldn't apply, Article 19, because they have contracted out in the past.
>
> I told him that the magnitude of the job didn't make any difference, that I agreed, true, the job had been contracted, such as building scaffolding from the bottom of the boiler all the way to the top, and it was done in 1982 or '83, and at that particular time we also had some of the employees, members, who had assisted the contractor, and the contractor's name was either Vacuum Jet or another contractor at that time.
>
> I said when we brought this up at that particular time, the first time, we were informed that it was being performed in accordance with the collective bargaining agreement, and that through the normal discussion of those contract employees, we felt that the company, in good faith, gave us the information we asked for and had proven that it was being done under union conditions.
>
> That was basically where it was at. Tom Hess said he would respond in writing.

Hess' response, dated June 27, 1988, summarized the second-step meeting, as follows:

> It is the Union's position that the contractor's employees should have been paid at the Helper's wage rate for the job, because a Laborer assigned to Comanche would be paid at the Helper rate for performing scaffolding work. It is also argued that Union conditions include both wages and fringe benefits. The Union contends that scaffolding work has been performed in the past by Comanche maintenance personnel, and that when such work has been contracted, it was reportedly done under Union conditions. As settlement, the Union requests information regarding the number of contract personnel on site during the job, and wage rates paid by the contractor, with the difference between the actual wages and Helper wages for total hours worked to be paid by the Company to the Building Trades Welfare Fund. In addition, the Union requests that in the future, when contractors are on site, that the chief steward be provided excused absence with pay to verify if work is being performed under Union conditions.

The letter proceeded to provide the ensuing statement of Respondent's position:

> The scaffolding work in this case was awarded to Glenn's Scaffolding on a firm price basis, and included both labor and materials. Although maintenance personnel at Comanche have performed relatively minor scaffolding work in the past, projects of the scope and magnitude of this job, which included scaffolding of the entire boiler interior, have been performed exclusively by contractors in the past at Comanche. Required wage rates, if any, for such contract scaffolding work have not been based on the Helper rate in the past. Thus, the Company disputes the Union's claim that a deviation from past practice has occurred. The Company also maintains that since work of this type has ordinarily been contracted in the past at Comanche, Article 19, Section 9 does not apply in this case. Therefore the Company finds no violation of the Agreement, and this grievance is *denied* at the second step.

A third-step meeting was held and the Union renewed its requests, including the request for information about the wages and fringe benefits paid Glenn's Scaffolding employees. The Company denied the grievance at the third step[7] and

[7] Gary Goodwin, Respondent's manager of employee relations, testified the Company denied the grievance at the third step, for the following reasons:

> Q. On what basis did the company take the position that there was no violation of Article 19, Section 9?
>
> A. The first sentence, ''Company agrees that it will not contract any work which is ordinarily done by its regular employees for the specific purpose of laying off or demoting such employees.'' We did not contract that work for specific purpose of laying off or demoting such employees, so we did not violate that sentence.
>
> Q. And what about the other requirements of the contract provisions?

the Union requested arbitration. The Company also argues that the Union knew the contractor was paying the laborer's scale and the issue raised in the grievance was that the Helpers' wages should obtain, so, according to Goodwin, the Union already indicated it had the requested information. Respondent claims, through Goodwin, that it did not know the source of the Union's information or its accuracy. Goodwin also admitted on cross-examination that the Union asked the Company to provide proof that proper wages were being paid, albeit either laborer's or helper's scale.

The parties entered the following stipulation concerning the status of the arbitration: ''[i]n the Glenn's Scaffolding arbitration a demand for arbitration has been made, the union has designated its arbitrator, the company has designated its arbitrator, and those individuals have not selected an impartial third arbitrator.'' There has been no request the Board defer to the arbitration. It is General Counsel's position that the subject matter of the arbitration is before me for the limited purpose of determining whether the Union made a showing their request was relevant.

Respondent's labor relations representative, Steve McGonical, was told by Sena, during a Christmas party, ''that as long as the Company continued to use contractors they [the union] would file grievances.'' Sena admitted, as previously noted, that prior to the third-step grievance proceeding another contractor named Flow Mole became the subject of union inquiry. According to Sena's uncontradicted testimony, the Union filed a grievance concerning the Flow Mole contract, similar to that in the Glenn's Scaffolding case. However, in the Flow Mole case, the Union was informed by Marilyn Taylor, Respondent's vice president of human resources, that Respondent attempted to get the requested information from Flow Mole and either Flow Mole refused or did not have the information on hand. Arbitration has also been requested by the Union in the Flow Mole case.

Discussion

The general criteria in right-to-information cases was described in *Mobil Exploration & Production U.S.*, 295 NLRB 1179, 1180 (1989):

> It is well settled that an employer has a statutory duty to provide a union, upon request, with relevant information the union needs for the proper performance of its duties as a collective-bargaining representative. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). In determining whether an employer is obligated to supply particular information, the question is only whether there is a ''probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.'' *NLRB v. Acme Industrial Co.*, supra at 437. As the Supreme Court has stated, the disclosure obligation is measured by a liberal ''discovery-type standard,'' not a trial-type standard, of relevance. Ibid. Where the requested information deals with information pertaining to employees in the unit which goes to the core of the employer-employee relationship, said information is ''presumptively relevant.'' *Shell Development Co. v. NLRB*, 441 F.2d 880 (9th Cir. 1971). Where the information is presumptively relevant, the employer has the burden of proving lack of relevance. *Prudential Insurance Co.*, 412 F.2d 77 (2d Cir. 1969). ''But where the request is for information with respect to matters occurring outside the unit, the standard is somewhat narrowed . . . and relevance is required to be somewhat more precise. . . . The obligation is not unlimited. Thus, where the information is plainly irrelevant to any dispute there is no duty to provide it.'' *Ohio Power Co.*, 216 NLRB 987, 991 (1975); *Doubarn Sheet Metal*, 243 NLRB 821, 823 (1979). Thus, where the requested information deals with matters outside the bargaining unit, the union must establish the relevancy and necessity of its request for information. *San Diego Newspaper Guild, Local 95 v. NLRB*, 548 F.2d 863 (9th Cir. 1977).

I find that the information sought about Glenn's Scaffolding concerns operations and employees other than those represented by the Union and does not enjoy the presumption of relevance. *San Diego Newspaper Guild Local 95 v. NLRB*, ibid. However, the ''liberal discovery-type standard'' still applies. *George Koch & Sons, Inc.*, 295 NLRB 695, 699 (1989), citing *Pfizer, Inc.*, 268 NLRB 916, 918 (1984); *Local Electronic Systems*, 253 NLRB 851, 853 (1980); *Acme Industrial*, supra; and *New York Times Co.*, 270 NLRB 1267, 1275 (1984).

Since the requested information involves a nonunit operation, the Union has the initial burden of demonstrating relevance; ''whether the information requested is probably or potentially relevant.'' *New Jersey Bell Telephone Co.*, 289 NLRB 318, 329 (1988). Under Section 8(a)(5) of the Act, the Employer is obligated to comply with a union's request for relevant information to process a grievance unless it demonstrates the request is unduly burdensome, legitimately confidential, privileged, or the union waived its right to the information.

In ascertaining if the requested information is relevant, the Union does not have to show that the sought information will result in its prevailing in the arbitration, only that it is relevant to the disputed matter. As found in *New Jersey Bell Telephone Co.*, supra at 329:

> Therefore it need not be shown that the information will result in the union winning an arbitration, so long as it is relevant to the disputed subject matter. Indeed, the fact that the information may even tend to show that a grievance or potential grievance is without merit, equally serves a legitimate purpose of collective bargaining because such disclosure would enable the Union to determine which grievances it will pursue to

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A. The ''Company further agrees that prior to the awarding of a contract any major project of a type that has ordinarily not been contracted in the past . . . .'' In fact, this very type of project had been ordinarily contracted at Comanche.

Q. And are there any other requirements that you considered?

A. Well, if we had ordinarily not contracted that, then we would have gone on to comply with the language that followed. In paragraph (b), all new construction work, this was not new construction work. This was maintenance work inside the existing boiler room.

Q. Did the company inform the union of that position?

A. The company did in the third step grievance answer, from the third step grievance committee.

arbitration and which it will not. In this connection, the Court in *NLRB v. Acme Industrial Co*., stated at 438:

> Arbitration can function properly only if the grievance procedures leading to it can sift out unmeritorious claims. For if all claims originated as grievances had to be processed through to arbitration, the system would be woefully overburdened.

In this case the Union seeks information to substantiate its claim in its grievance that Glenn Scaffolding's employees received laborers' wages for doing the same work as unit employees who received helpers' wages. The Union claims that under article 19, section 9(a) and article 30 of the collective-bargaining agreement, the helpers' scale is the appropriate wage for the subcontractors employees. In pursuit of this grievance, as admitted in Respondent's letter of June 27, 1988, the Union requested ''information regarding the number of contract personnel on site during the job, [and] the wage rates paid by the contractor,'' to permit Respondent to pay the difference into the Building Trades Welfare Fund.

Respondent argues it has no obligation to provide the requested information on several grounds. Initially, the Company asserts the Union has failed to carry its burden of demonstrating the sought information is relevant. In support of this claim, Respondent states the provisions of article 19, section 9(a) of the collective-bargaining agreement are inapplicable for there was no showing the work contracted out was done for the purpose of laying off or demoting employees or that similar projects have not ordinarily been subcontracted in the past, for the same type of work was performed by subcontractors in 1982, 1985, 1986, and 1987. These may be the facts to be determined by the arbitrator. The Company did not claim similar information it sought from Flow Mole, in response to a union request in connection with a grievance, was not relevant. Similarly, as noted earlier, Maez previously received information about another subcontractor, Vacuum Jet. There is no basis given for this change in position concerning Glenn's Scaffolding.

I find the requested information meets the standard of relevance. The Union, consonant with its duty to police the collective-bargaining agreement, sought to determine if two or more articles of the agreement were violated by the subcontracting of work which it believed could, and perhaps should have been done by unit members or at Helpers' scale. As the Court noted in *Vaca v. Sipes*, 386 U.S. 171 (1967):

> In administering the grievance and arbitration machinery as statutory agent of the employees, a union must, in good faith and in a non-arbitrary manner, make decisions as to the merits of particular grievances. In a case such as this, when [the grievant] supplied the Union with medical evidence supporting his position, the Union might well have breached its duty had it ignored [the grievant's] complaint or had it processed the grievance in a perfunctory manner. [Citations omitted.]

I also find that the issues raised by the grievance are not so clearly unfounded to warrant a conclusion the information sought is not relevant. As the Board found in *Ohio Power Co*., 216 NLRB 987, 995 (1975):

> As a further reason for not being required to produce the information requested, the Respondent says that the information would not be useful or helpful in processing the grievances. That proposition, however, is one for presentation in the grievance procedure.

In this proceeding, the requested information, in part, was to confirm the scale paid the subcontractors' employees. Maez only learned what was being paid one of the subcontractors' employees. This information did not include benefits[8] or information of what the other employees of Glenn's Scaffolding were being paid. There was no evidence that this information was reliable and indicative of what all the other subcontractors' employees were being paid. There is no predicate for my making this assumption. Thus, assuming arguendo the information would not be helpful in processing the grievance, the information is useful in assisting the Union to determine whether to prosecute the grievance. Id. The number of employees used by the subcontractor as well as the wage scale paid also have relevance to the Union's legitimate interest of determining if appropriate unit work and promotional opportunities were adversely impacted.

In sum, I conclude the sought information is relevant to processing the grievance, it directly relates to policing the terms of the collective-bargaining agreement. To evaluate the request further would adversely impact on the contractual arbitration procedure by first deciding in this proceeding the merits of the grievance under the guise of determining the relevance of the requested information. The information sought by the Union is sufficiently related to its duties to police the contract to establish relevance without undermining the contractual dispute resolution mechanism in accordance with the principles established in *Collyer Insulated Wire*, 192 NLRB 837 (1971); *Spielberg Mfg. Co*., 112 NLRB 1080 (1955), and their progeny.

After a finding of relevance, ''the employer has the burden to prove a lack of relevance . . . or to provide adequate reasons as to why he cannot, in good faith, supply such information.'' *San Diego Newspaper Guild Local 95 v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1980). In attempting to meet this burden Respondent claims it does not have the information. The Company never requested the information from the subcontractor. As noted by Charging Party, the contract between Respondent and Glenn's Scaffolding requires the subcontractor to perform the work ''insofar as possible . . . under union conditions'' and ''[t]o maintain accurate and satisfactory records and books of account adequate to evidence compliance with the agreement'' and to submit to an audit on request by Respondent who must give 30 days' notice.

I find Respondent has failed to meet its burden of demonstrating the information is unavailable for it has not indicated it asked Glenn's Scaffolding for the information. *Doubarn Sheet Metal*, 243 NLRB 821, 824 (1979); *United Graphics*, 281 NLRB 463, 466 (1986). There is no parity of position for the Union to ask the subcontractor for the information that would abrogate Respondent's affirmative obligation to make reasonable efforts to obtain information relevant

[8] The issue of whether benefits are properly included in the terms of art. 19, sec. 9(a) has not been decided by grievance or other device. The issue has been resolved regarding the terms of art. 19, sec. 9(b), but such a determination did not cover the collective-bargaining provisions raised in the grievance underlying the request for information in this proceeding.

to the pending grievance. *Beyerl Chevrolet*, 221 NLRB 710, 721 (1975), and cases cited therein as modified by *Food & Commercial Workers Local 1439 (Layman's Market)*, 268 NLRB 780 (1984).

I similarly find Respondent's claim that the information is confidential fails to provide an adequate reason for its failure to supply the information. In resolving issues of asserted confidentiality, the Board first determines if the employer has established any legitimate and substantial confidentiality interest, and then balances that interest against the union's need for the information. *A-Plus Roofing*, 295 NLRB 967 (1989), citing *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 315, 318 (1979); *Minnesota Mining & Mfg. Co*., 261 NLRB 27, 30 (1982); *Pfizer Inc*., 268 NLRB 916 (1984). I have previously found that the Union's request was relevant to its duty to police and administer its collective-bargaining agreement with Respondent as to the number of employees employed by the subcontractor and the wages and benefits received by the subcontractor's employees working at Respondent's facility.

Respondent has done no more than raise a bare claim of confidentiality or privacy. The contract with the subcontractor provides for the work under ''union conditions'' as far as possible and for maintenance of records to evidence compliance with that agreement. Respondent made no offer to conditionally provide the information to protect any claimed confidentiality or privacy. There is no evidence Respondent promised confidentiality. The Company did not indicate the subcontractor or its employees were asserting any privilege of confidentiality or privacy. Accordingly, I must find that Respondent failed to justify its failure to provide the relevant information because of valid confidentiality or privacy claims. See *Mobil Exploration & Production U.S.*, supra, 295 NLRB at 1181, which held:

> Even where claims of confidentiality are supported by evidence, the Board has allowed such information to be furnished to the union, subject to bargaining regarding the conditions under which the bona fide confidentiality of the information may be protected from unauthorized viewers. *E. I. DuPont & Co*., 276 NLRB 335 (1985).

Somewhat antithetically to the claim of confidentiality, Respondent also argued at trial the Union could ask Glenn's Scaffolding employees for the information. As noted in *New Jersey Bell Telephone Co*., supra, 289 NLRB 329, ''[I]t is clear from the case law that an Employer may not refuse to furnish information relevant to a grievance on the grounds that the union has alternative means of obtaining the information.''[9] See also *New York Times Co*., 265 NLRB 353 (1982); *Chesapeake & Potomac Telephone Co. v. NLRB*, 687 F.2d 633, 638 (2d Cir. 1982).

Respondent further claims it should be relieved of its obligation to provide the information if it is found relevant for the information was requested ''largely for harassment.'' This claim was not raised at the time Respondent failed to provide the Union the information and there is no assertion this defense was raised during the grievance meetings. *J. I. Case Co. v. NLRB*, 253 F.2d 149, 154, 156 (7th Cir. 1958). Also, this contention was not substantiated. The resolution of a grievance on the subject of subcontracting under the cited contractual provisions may resolve the issue. The raising of the question under the contract as part of the Union's duty to police the collective-bargaining agreement has not been shown to constitute harassment. *Blue Diamond Co*., 295 NLRB 1007 (1989);[10] *A-Plus Roofing*, supra, 295 NLRB at 970.

I find therefore that by failing and refusing to make reasonable efforts to obtain and provide the information requested by the Union, Respondent has violated Section 8(a)(5) and (1) of the Act.

2. Alleged direct dealing

This allegation involves a grievance filed by the Union on behalf of a member of the bargaining unit, Cynthia Bishop, who was discharged by Respondent in June 1987. The first step of the grievance procedure was held shortly thereafter. The Company denied the grievance; it did not want to reinstate Bishop. Sena requested a second-step meeting. The Union's request for reinstatement with backpay was also denied by Respondent at the second step.

Sena, who handled the first two steps of the grievance for the Union, asserts that in early February, around February 10, 1988, he spoke with Marla Petrini, an attorney representing Respondent in labor matters, in front of the building housing the Board's Denver Regional Office. According to Sena:

> I told Marla that could we possibly look into some solution in resolving the arbitration case before going to arbitration, and she asked me what I had in mind, and I said, Well, you know, I think that we could start with agreeing on a certain doctor, what have you, to get a medical evaluation, and Marla's comment was that, She's seen enough doctors. And that was it.[11]

Sena asserts that Petrini did not make any reference to any title VII or EEO case pending at the time of this conversation.

Sena stated that neither Petrini nor Goodwin ever informed him why Respondent or its representatives did not directly communicate with the Union or why the Union was not involved in the other settlement discussions. Petrini did not recall any conversation on the street in front of the building but did remember conversing about several arbitration cases, including the Bishop case, and she made an ''offhand com-

[9] As found in *Kroger Co*., 226 NLRB 512, 513 (1976):

> Absent special circumstances, a union's right to information is not defeated merely because the union may acquire the needed information through an independent course of investigation. The Union is under no obligation to utilize a burdensome procedure of obtaining desired information when the employer may have such information available in a more convenient form. The Union is entitled to an accurate and authoritative statement of facts which only the employer is in a position to make.

[10] There is no claim that the request for information is unduly burdensome.

[11] Sena's testimony was corroborated by Maurice M. Ward, who was a newly employed union business agent at the time of the conversation. Ward claimed:

> A. What was said that Mr. Sena asked Ms. Petrini, he said, On this Cindy Bishop case, I think we can shed some light on it or some new evidence if you would—concerning different medical opinions or additional medical opinions.
>
> Q. Was there any reply, to the best of your collection?
>
> A. Yes. She said, We have all the medical opinions we need. And with that, we walked across the street to the parking lot and down the road she went. [Quotation marks omitted in transcript.]

ment.'' She was unsure of the date she knew the Bishop grievance was set for arbitration. Although she could not recall what her comment was she surmised, ''it did not rise to the level of any kind of settlement discussion or rebuff of an offer of settlement discussion.''

Sheehan handled the grievance for the Union at the third step. According to Sheehan, the Company never discussed settlement at the third-step meeting; they only discussed items in Bishop's personnel file. Subsequent to the meeting, the Company again denied the grievance. Arbitration was requested and scheduled for April 1988. After the third-step meeting, Sheehan had occasion to talk with Goodwin and another company representative, Jeanne Berryman, a labor relations representative, in February 1988, and she asked them if, off the record, they were going to ''put together'' a settlement proposal in the Bishop case. Goodwin allegedly responded, ''Not to his recollection, no.'' According to Sheehan, the Union and Company on occasion informally discuss pending arbitrations ''off the record,'' when they meet on other matters. Such informal discussions do not occur in every case. Goodwin did not recall having this conversation with Sheehan, but admitted often commenting on cases to union representatives in passing. He opined he would not consider the unrecalled comment as a request for negotiations. However, Goodwin admitted on cross-examination that settlements have resulted from informal proposals.

Sena also had a conversation with Goodwin in December 1987 at classes referred to as a ''pluralism training program'' which the Respondent operated to teach their managers and employees to ''value differences of race, sex, [ethnic] background.'' During the conversation Sena said: ''You should settle that case, you should reinstate her. And I said, I don't think so, because I thought we had a pretty good case on her discharge.''

On or about February 18, 1988, Bishop telephoned Sena and informed him that in another proceeding, the Company had offered $10,000 in settlement of her grievance and the other cases she had pending against Respondent. Sena called Baca around February 26, 1988, and confirmed the Company made the $10,000 settlement offer and that such discussions were occurring without the participation of the Union. Baca had written Respondent on April 30, 1987, stating, among other things, that he represents Bishop. According to Petrini, an attorney representing Respondent in the EEO litigation, at the time of this settlement conference, Bishop had pending against the Company three grievances, the EEO complaint which became the basis for a title VII action, two previous EEO complaints, an unemployment compensation action and a workmen's compensation action. Petrini was also involved in the grievance, the unemployment compensation action and the workmen's compensation action.

Bishop had legal counsel in several of these cases. In the unemployment compensation case at the referee level, John Lizza was her counsel. When that case went before the Industrial Claims Appeals Office she was represented by Michael Surruto, an attorney general. In the workmen's compensation case she was represented by Edward Scheunemann. In the title VII action Bishop was represented by Paul Baca for the purposes of the matter addressed in the letter. The title VII complaint was filed on December 31, 1987, and Petrini's law firm responded on or about January 22, 1988.

The title VII action was assigned to United States District Court Judge Richard P. Matsch, who assigned United States Magistrate Hilbert Schauer on January 26, 1988, to among other things, convene settlement conferences. Pursuant to this Order of Reference, a settlement conference was set for February 25, 1988, before the magistrate, by letter dated January 28, 1988. It was concerning this settlement conference that Petrini communicated Respondent's settlement offer to Baca, and Bishop communicated the substance of the settlement offer to Sena. The Union was not informed of this settlement conference and did not participate in the negotiations. Since the Company was negotiating a settlement with Bishop and others without the participation of a union representative, the Union filed the unfair labor practice charge on February 26, 1988, alleging violation of Section 8(a)(5) and (1) of the Act.

Prior to the February 25 settlement conference, on or about February 18, Respondent offered to settle the title VII case for $10,000 and Bishop dropping all claims against the Company, including the grievance, the workmen's compensation claim and unemployment compensation claim.

The settlement conference was held on February 25, 1988, before Magistrate Schauer. For Respondent, Petrini and Clark Stephens attended, and Bishop and her attorney, Baca, were present. There was no representative from the Union. At some point in time, Respondent asked Baca to contact the Union so it would be involved in the settlement discussions.[12] On March 10, Petrini wrote Baca, in response to the Union's charge. As here pertinent, the letter stated:

> We would wish to continue to negotiate with you in good faith but with Ms. Bishop's agent, the Union, filing charges against Public Service for doing so, the situation has been made very difficult. As I am sure you are aware, it makes no sense for us to resolve her federal court action only to try the case again in arbitration and before the Department of Labor in the unemployment and workmen's compensation context.
>
> We are to meet again on March 23rd to attempt to resolve this matter. Therefore, I would request that you contact the Union and whoever else is necessary so that you would have the authority to enter into a binding agreement. We must be assured that sitting down and negotiating with you does not subject Public Service to more charges from various sources.
>
> Please contact me at your earliest convenience as to how you wish to proceed in this matter.

On March 25, Sena was contacted by Baca in response to Petrini's March 10, 1988 letter, which was 2 days after the March 23 settlement conference. He had previously made

[12] According to Baca, Petrini told him:

> [I]t was stated that they would like to wrap the whole case up without settling it one piece at a time, if possible. That's my recollection.
>
> Now, I can't tell you whether this happened at the first conference or the second conference, but there was a verbal comment made to me by Petrini about the union becoming involved. Because I remember I attempted to get hold of Mr. Sena from the union one time shortly before, I believe it was—my memory tells me it was shortly before the second conference, which would have been in March sometime. I didn't vigorousy attempt to get hold of him. I didn't call him five or six times. I remember I called one time the day before, and he was unavailable, and the conference was the next day or something.
>
> Baca believed he learned of the Union's involvement as of the date of the March 10 letter from Petrini.

one or two attempts to contact Sena, without success. Baca advised Sena Respondent requested the grievance be withdrawn or dropped as part of the settlement offer. During this or a later conversation, Sena advised Baca that his client could not drop or withdraw the grievance without the Union's express prior approval once it goes beyond the first step of the grievance procedure. This conversation with Sena was the first time Baca was told Bishop did not have the ''power'' to withdraw the grievance. Petrini advised Baca in a letter dated May 11, 1988, that she perceived she had an ethical problem bringing the Union into the settlement negotiations.[13]

Baca, who admitted he was not familiar with labor law, did not know until his March 25 conversation with Sena that Bishop could not unilaterally withdraw the grievance, and up to that date he negotiated settlement before the magistrate under the belief she could withdraw the grievance at any time without the Union. On March 26, 1988, Baca informed Petrini of his communications with Sena to date, including his newly acquired information that Bishop no longer possessed the authority to withdraw the grievance, which he had been unaware of, but he recommended to the Union that it be withdrawn.[14]

There was a tentative settlement to which all parties agreed in or about April, which was not finalized. During these settlement negotiations, Sena communicated and negotiated with Goodwin for Respondent. Petrini asserts she refrained from communicating with the Union during the pendency of the title VII proceedings because she interpreted Disciplinary Rule 7–104 of the Colorado Code of Professional Responsibility[15] as barring her from contacting the Union regarding the grievance for Bishop was represented by counsel in the title VII and other cases since they shared the same subject matter, i.e., reinstatement and/or a monetary award, because of her termination by Respondent.

Petrini testified, ''that I would have felt that was an ethical violation on my part. I did not myself nor did I direct my client to contact the union during the time that I was dealing with Mr. Baca until I felt that we had a settlement with Mr. Baca in the Title VII and that he would coordinate settlement with everyone else as well.'' Petrini did not do any legal or other research on the disciplinary rule. She is not familiar with any case law prohibiting a party from consulting with a union about a grievance when a party has filed a lawsuit in court and is represented by a lawyer in that suit. Petrini was the lawyer who was assigned to handle the Bishop arbitration, which was set for April 1988, as well as the title VII case. She claims a clear reading of the disciplinary rule indicates she would have been in violation:

> By communicating with the union or causing my client to communicate with the union, the union would, of necessity, have had to communicate with Cindy Bishop. That would have been due to the commonality of circumstances between the arbitration and the Title VII action, the subject of the representation of Mrs. Bishop. I knew she was represented by an attorney and, therefore, the impropriety.

She claims she could not communicate with the Union because she would have been causing another to communicate to Bishop on the subject of representation of Baca's suit.

> Q. In other words, you would have then been causing Mr. Sena to communicate with Ms. Bishop; is that your theory?
>
> A. That's correct.

Petrini knew at the time she learned of Bishop's grievance and arbitration that she was represented by the Union for the purposes of collective bargaining and in some cases the Union uses attorneys, particularly in cases involving certain issues, but in most cases the Union proceeds without counsel. No union counsel had entered their appearance as representing Cindy Bishop at any time here pertinent.

Petrini also did not consider the impact of the second part of the disciplinary rule, having left all coordinating of cases up to Baca. She testified she did not consider the National Labor Relations Act as a law permitting her to communicate or cause another to communicate with a party even though she knew Bishop was represented by the Union, for a lawyer did not enter an appearance as representing the Union and/or Bishop.

According to Baca, under the Code of Professional Responsibility, Respondent was required to deal with him concerning the title VII complaint. The Union was not a party in that proceeding and never sought to intervene or otherwise protect any interest in that proceeding.[16] Baca further testified as follows:

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[13] As here pertinent, the letter provides:

> [O]f course, if you and I had not reached agreement on the Federal Court suit, we would not ethically been able to approach the Union for fear of contacting your client without our approval. Once our settlement was reached, we were free to deal with the Union concerning its grievance for Cindy Bishop.

[14] Baca also wrote Sena a letter on March 25, 1988, which provided, as here pertinent:

> Enclosed please find a copy of my letter to Marla [Petrini] regarding our conversation of today. I am also enclosing a copy of a letter from her to me dated March 10, 1988 wherein she discussed the difficulties to resolving the Bishop matter in light of the charge filed by the union with the NLRB. As you can see in the third paragraph of the letter she recommended that I contact the union in this matter. I thought I would send you a copy of this letter to show that she was attempting to involve the union in this settlement process.
>
> As I indicated to you in our conversation it is my client's recommendation that the grievance be withdrawn and that the unfair labor practice charge with the NLRB be withdrawn.

[15] The rule reads as follows:

> (A) During the course of his representation of a client a lawyer shall not:
>
> (1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.
>
> (2) Give legal advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.

[16] Respondent argued on brief the Supreme Court decision in *Firefighters Local 93 v. City of Cleveland*, 478 U.S. 501 (1976), is dispositive of the allegation it engaged in direct dealing; that it precludes a finding that Respondent violated Sec. 8(a)(5) of the Act by negotiating and entering a consent decree in the title VII. I find the Court's decision inapplicable to the instant case, for, among other reasons, the union did not intervene in the title VII proceeding and participate in the consent decree. As the Court noted at p. 529:

> Of course, parties who choose to resolve litigation through settlement may not dispose of the claims of a third party, and a fortiori may not impose duties or obligations on a third party, without that party's agreement. A court's approval of a consent decree between some of the parties therefore cannot dispose of the valid claims of nonconsenting intervenors;

Continued

Q. (By Mr. Goldhammer) Okay, let me ask you that question: What is your understanding with regard to what the Code of Professional Responsibility in Colorado requires insofar as the union's participation in any settlement discussions of the Title VII action is concerned.

A. I didn't see any requirement that I had to involve the union in the matter at that point in time because it was my understanding that she could withdraw—that her grievance was her grievance and she could do with it as she chose.

Q. Okay, but what was your understanding with regard to whether the company could contact the union to resolve the grievance during the pendency of the Title VII action? Any ethical restraints as far as that's concerned?

A. Are you asking me whether or not there was any ethical restraints on the Public Service?

Q. Ms. Petrini, representing the company, contacting the union to resolve the grievance or to have the union present at the adjustment of the grievance? By that, I mean the settlement.

A. I didn't see—in fact, I was of the opinion, Hey, you guys get them involved. I mean, that was my attitude towards it.

JUDGE WIEDER: Excuse me. The question, sir, was, did you see any bar under this state's Code of Professional Conduct—

THE WITNESS: From them contacting the union?

JUDGE WIEDER: To adjust the grievance.

THE WITNESS: I didn't see any, no.

Q. (By Mr. Goldhammer) Did you ever convey to Ms. Petrini that it was her obligation to get the union involved instead of your obligation to get the union involved?

A. I don't recall ever doing that. I was just kind of thinking out loud when I said, Hey, if you want them involved, you guys get them involved. . . .

Q. (By Mr. Kerber) You stated that you didn't think there was any problem getting the union involved in settlement—a very general question—settlement of the grievance. And what I'm asking you, in probing your understanding of the ethical Code of Responsibility is what if, in the result of that settlement, the facts are requested from your client, facts which are particularly relevant from your case?

A. I'd have a problem with that, sure.

Q. What about if, as a result of that settlement, that certain offers of relief were given that were as a result of your case without including you in those discussions?

A. I'd have a problem with that, too.

JUDGE WIEDER: I have a question. In circumstances where there's more than one cause of action involved and more than one attorney representing a client, such as with the Workmen's Compensation claim, another attorney, what is your understanding under the state's Code of Professional Responsibility on how settlement is conducted? Do you contact each attorney or does everybody have a representative present during the settlement conference?

THE WITNESS: Well, I believe that the other attorneys should be contacted. In fact, in this particular case in regards to our Workmen's Compensation claim, as well as the unemployment claim, she had been in contact with her attorneys and I had advised her to consult with them to let them know what she was doing and if they had any problem with it, to get in touch with me.

JUDGE WIEDER: And did you do the same with the union, their representative?

THE WITNESS: No.

Baca agreed the problem of multiple attorneys could have been resolved by having them all sit in the same room together and discuss settlement. He recently had a case where he was invited to sit in as a nonintervening party for settlement discussions. He also had a case where the union representing one of his clients intervened in the action but the exact nature of the proceedings and the union's involvement were not described.

The Company adopted the position they would not settle one case without settling the others, since there was a commonality of issues. Respondent did not ask Baca or any of the other lawyers representing Bishop in any of the cases whether Respondent could speak with the Union. Instead, Petrini considered Baca to be responsible for getting all parties to agree to any settlement, the Company did not want to handle the coterie of cases piecemeal.

According to Baca, after his initial conversation with Sena on March 25, 1988, Sena became an active participant in the settlement negotiations and negotiated a separate agreement with the Company for withdrawal of the Bishop grievance. Baca had no objection to Sena's participation in the settlement discussions, in fact he found him to be of great service in reaching a settlement.

On May 27, 1988, Baca received a request from Petrini for a written waiver authorizing her to talk directly with the Union ''concerning the payment of medical benefits directly to Cynthia Bishop as opposed to Comprecare.'' Baca, the same day, wrote Petrini authorizing her to discuss the matter with the Union. This was the first and only request for a waiver to permit Respondent's representative to talk directly with the Union, about 1 month after Sena was brought into the negotiations by Baca. There was no evidence indicating there were any impediments to Respondent seeking such authorization at an earlier date.

On or about April 13, 1988, Sena and Goodwin reached a settlement agreement on the grievance. This settlement agreement later had to be renegotiated. Baca, on June 2, 1988, gave Sena authorization to renegotiate one issue on behalf of Bishop. The parties entered into a release and settlement agreement on June 3, 1988. In this agreement, the Union did not agree to withdraw the unfair labor practice charge here under consideration.

Discussion

Under Section 8(a)(5) of the Act, it is an unfair labor practice for an employer ''to refuse to bargain collectively with the representative of his employees.'' Section 8(d) of the Act describes the duty to bargain collectively, in relevant part, as

if properly raised, these claims remain and may be litigated by the intervenor. [Citations omitted.]

prohibiting either party to a collective-bargaining agreement from unilaterally terminating or modifying the agreement during its effective term. Section 8(d) also gives each party to the contract the right to refuse ''to discuss or agree to any modifications of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract.'' See *Ad-Art, Inc*., 290 NLRB 590 (1988), where Administrative Law Judge Jay R. Pollack stated at 606:

> Section 8(a)(5) creates an obligation on the part of an employer to bargain with an incumbent union as the exclusive bargaining representative of its employees in the matter of wages, hours, terms, and conditions of employment. It may not attempt to circumvent the exclusive status of the bargaining agent by attempting to deal directly with its represented employees. *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678 (1944). An employer must deal in bargaining negotiations with the statutory representative and cannot bargain directly or indirectly with the employees. *NLRB v. Insurance Workers*, 361 U.S. 477 at 484–485 (1960). ''The employer's statutory obligation is to deal with the employees through the union, and not with the union through the employees.'' *General Electric Co*., 150 NLRB 192, 195 (1964).

In this case, the General Counsel and the Charging Party assert that Respondent, by entering into settlement discussions in the title VII proceedings pursuant to the orders of the Magistrate appointed by the United States District Court Judge, dealt with Bishop directly or indirectly through her attorney, Baca. I find this claim to be without merit.

It is uncontroverted that during settlement conferences in the title VII case, under the auspices of a United States magistrate, Respondent did make settlement offers, and all offers were subject to resolution of all the related cases. To effect this end, Respondent suggested Bishop's attorney, Baca, communicate with the Union as well as the other parties to the related proceedings. Since any settlement was contingent upon resolution of the grievance, there were no communications ''which indicates an effort by the Respondent to bargain directly with the employees or an indication to them to abandon their representative to achieve better terms directly from the Respondent.'' *United Technologies Corp*., 274 NLRB 1069, 1074 (1985). Cf. *Safelite Glass*, 283 NLRB 929 (1987).

In the instant case, there was no attempt to bypass the Union, only to avoid what Respondent's counsel construed as violating Colorado's Code of Professional Responsibility. In a situation where an employee initiated several legal actions, including a grievance, the Respondent is not precluded from negotiating settlement with the attorney for the employee in one of these actions, under the direction of a United States magistrate, where cognizance is taken of the Union's rights. I find that Respondent did not attempt to bypass the Union when it negotiated settlement with Baca under the condition that all disputes arising out of Bishop's discharge be resolved in the agreement. The employee, through Baca, was encouraged, in fact requested, to communicate the substance of the negotiations to the Union and gain their approval. This posture cannot be said to invite direct bargaining for there was the explicit request the Union be informed of the proposal. There was no showing Respondent attempted to undermine or dodge the Union and therefore this was not a violation of Section 8(a)(5) of the Act. Accordingly, I recommend that this allegation be dismissed.

CONCLUSIONS OF LAW

1. Respondent, Public Service Company of Colorado, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local 111, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material the Union has been the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act for the following appropriate unit:

> All operating, production, and maintenance employees of the gas and electric operating department, including appliance servicemen of the commercial department, storekeepers and warehousemen of the accounting department and health physics technicians at Fort St. Vrain, But EXCLUDING part-time employees doing miscellaneous work, all other employees of the commercial and accounting departments, all engineering and other technical employees, and all supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

4. At all times material, the Union has been the exclusive collective-bargaining representative of all of the employees in the unit found appropriate in Conclusion of Law 3 for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By coercively threatening a union steward to not honor the grievance processing mechanism of the collective-bargaining agreement, Respondent violated Section 8(a)(1) of the Act.

6. By coercively and disparately ordering a union steward to remove only union stickers from the window to his office cubicle without showing special circumstances, Respondent violated Section 8(a)(1) of the Act.

7. By failing and refusing to make reasonable efforts to obtain and furnish the Union with certain information requested by it, Respondent has engaged in an unfair labor practice in violation of Section 8(a)(5) and (1) of the Act.

8. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent Employer has engaged in unfair labor practices proscribed by Section 8(a)(1) and (5) of the Act, I recommend that it cease and desist therefrom, and that it take certain affirmative action provided for in the Order below, designed to remedy the unfair labor practices and to effectuate the policies of the Act.

Insofar as Respondent failed and refused to engage in reasonable efforts to obtain and furnish the information requested by the Union regarding the Glenn's Scaffolding grievance, I recommend that Respondent make reasonable ef-

forts to obtain and provide, on request, the information sought by the Union in conjunction with its obligations as the unit's collective-bargaining representative policing the collective-bargaining agreement in processing a grievance.

On the foregoing findings of fact and conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended[17]

ORDER

The Respondent, Public Service Company, Denver, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees to not honor the grievance processing mechanism of the collective-bargaining agreement.

(b) Disparetly ordering a union steward to remove only union stickers from the window to his office cubicle without showing special circumstances or otherwise abrogating the coercive effect of the directive.

(c) Refusing to bargain in good faith with the International Brotherhood of Electrical Workers, Local 111, by refusing to make reasonable efforts to obtain for and furnish to the Union information relevant to the processing of grievances or the administration of the collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act or in any like or related manner refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, ask Glenn's Scaffolding, in writing, the information sought by the Union concerning the wages and fringe benefits paid by Glenn's Scaffolding to its employees working at Public Service Company under a subcontract.

(b) Post at all facilities and places of business in Denver, Colorado, copies of the attached notice marked ''Appendix.''[18] Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT expressly or impliedly threaten our employees with a refusal to honor the grievance processing mechanism of the collective- bargaining agreement.

WE WILL NOT coercively and disparately order any employee to remove only union stickers from the window to his office cubicle without showing special circumstances permitting such a directive.

WE WILL NOT fail and refuse to make reasonable efforts to obtain and furnish the International Brotherhood of Electrical Workers, Local 111 with certain information requested by it as the exclusive representative of our employees in the following appropriate unit:

> All operating, production, and maintenance employees of the gas and electric operating department, including appliance servicemen of the commercial department, storekeepers and warehousemen of the accounting department and health physics technicians at Fort St. Vrain, But EXCLUDING part-time employees doing miscellaneous work, all other employees of the commercial and accounting departments, all engineering and other technical employees, and all supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce any of you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL, on request, make reasonable efforts to obtain and furnish the Union the information requested that is relevant and necessary to its role as the exclusive bargaining representative of our employees in the bargaining unit.

PUBLIC SERVICE COMPANY OF COLORADO

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[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''